

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 02-2177

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United States of America,

Appellee,

v.

Eve Monique Ealy

Appellant.

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Appeal from the United States  
District Court for the Eastern  
District of Arkansas.

**[UNPUBLISHED]**

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Submitted: October 28, 2002

Filed: October 31, 2002

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Before LOKEN, BYE, and RILEY, Circuit Judges.

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PER CURIAM.

After entering a conditional guilty plea to possession with the intent to distribute more than 500 grams of cocaine hydrochloride, in violation of 21 U.S.C. § 841(a)(1), Eve Monique Ealy appeals the denial of her suppression motion. Ealy's notice of appeal was untimely filed twenty-seven days after judgment was entered in the district court. See Fed. R. App. P. 4(b)(1)(A)(i). This appellate defect is jurisdictional, but Rule 4(b)(4) of the Federal Rules of Appellate Procedure authorizes the district court, "before or after the time has expired, with or without motion and notice," to extend the appeal period for up to thirty days "[u]pon a finding of excusable neglect or good cause." Because Ealy's notice of appeal was untimely

by less than thirty days, we remand the case to the district court for a determination of whether the time for filing a notice of appeal should be extended under Rule 4(b)(4). See United States v. Austin, 217 F.3d 595, 597 (8th Cir. 2000); United States v. Petty, 82 F.3d 809, 810 (8th Cir. 1996).

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.